

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

April 30, 2019

Elisabeth A. Shumaker
Clerk of Court

W. CLARK APOSHIAN,

Plaintiff - Appellant,

v.

WILLIAM BARR, Attorney General of the
United States; UNITED STATES
DEPARTMENT OF JUSTICE; THOMAS
E. BRANDON, Acting Director Bureau of
Alcohol Tobacco Firearms and Explosives;
BUREAU OF ALCOHOL TOBACCO
FIREARMS AND EXPLOSIVES,

Defendants - Appellees.

No. 19-4036
(D.C. No. 2:19-CV-00037-JNP-BCW)
(D. Utah)

ORDER

Before **MATHESON, PHILLIPS**, and **CARSON**, Circuit Judges.

This matter comes before the court on the Emergency Motion for Injunction Pending Appeal filed by appellant, Clark Aposhian. Appellant seeks to enjoin appellees during the pendency of this appeal from enforcing against him Final Rule, *Bump-Stock-Type Devices*, 83 Fed. Reg. 66514 (Dec. 26, 2018), which went into effect March 26, 2019. By order entered March 21, 2019, this court granted a temporary injunction solely for the purpose of giving the court adequate time to properly consider the motion. At the court's direction, appellees filed a response to the motion and appellant filed a permissive reply.

To be entitled to an injunction pending appeal, appellant must show (a) that he is likely to succeed on appeal; (b) that he will suffer irreparable harm if the injunction is not granted; (c) that the appellees will not be substantially harmed if the injunction is granted; and (d) that the public interest supports an injunction. *See Nken v. Holder*, 556 U.S. 418, 434 (2009); *Warner v. Gross*, 776 F.3d 721, 728 (10th Cir. 2015); 10th Cir. R. 8.1. An injunction pending appeal is not a matter of right; it is an exercise of the court's discretion. *See Nken*, 556 U.S. at 433.

Upon review of the materials filed by the parties and the pertinent law, the court concludes that an injunction pending appeal is not warranted in this case. Therefore, the temporary injunction pending appeal is vacated and appellant's Emergency Motion for Injunction Pending Appeal is denied.

Judge Carson would grant the motion.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk